

State of Wisconsin



2023 Assembly Bill 793

Date of enactment:
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2023 WISCONSIN ACT

AN ACT *to amend* 71.05 (6) (a) 26. a., 71.05 (6) (a) 26. b., 71.05 (6) (a) 26. c., 71.05 (6) (b) 32. a., 71.05 (6) (b) 32. ae., 71.05 (6) (b) 32. am., 71.07 (10) (a) 1., 71.07 (10) (a) 3., 71.07 (10) (b), 71.07 (10) (c) 2., 71.28 (10) (c) 2., 71.47 (10) (c) 2. and 224.50 (2) (a); and *to create* 71.05 (6) (b) 32. ap., 71.07 (10) (c) 3., 71.28 (10) (c) 3., 71.47 (10) (c) 3. and 71.98 (11) of the statutes; **relating to:** modifying the tax treatment of college savings accounts and the employee college savings account contribution credit.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 71.05 (6) (a) 26. a. of the statutes is amended to read:

71.05 (6) (a) 26. a. To the extent that the receipt of such the amounts by the owner or beneficiary of the account results in a penalty as provided in 26 USC 529 (c) (6), any amount that was not used for qualified higher education expenses, as ~~that term is defined in 26 USC 529 (c) (7), (8), and (9) and~~ (e) (3), and was contributed to the account after December 31, 2013, except that this subd. 26. a. applies only to amounts for which a subtraction was made under par. (b) 32. or 32m. For purposes of this subd. 26. a., a first in, first out method of accounting shall apply to the account.

SECTION 2. 71.05 (6) (a) 26. b. of the statutes is amended to read:

71.05 (6) (a) 26. b. Any amount rolled over by an owner into another state's qualified tuition program, as described in 26 USC 529 (c) (3) (C) (i), to the extent that the amount was previously claimed as a deduction under par. (b) 32. or 32m. For purposes of this subd. 26. b., a first in, first out method of accounting shall apply to the account.

SECTION 3. 71.05 (6) (a) 26. c. of the statutes is amended to read:

71.05 (6) (a) 26. c. To the extent that an amount is not otherwise added back under this subdivision, any amount withdrawn from ~~a college savings~~ the account, ~~as described in s. 224.50,~~ for any purpose if the withdrawn amount was contributed to the account within 365 days of the day on which the amount was withdrawn from ~~such an~~ the account and if the withdrawn amount was previously subtracted under par. (b) 32. For purposes of this subd. 26. c., a first in, first out method of accounting shall apply to the account.

SECTION 4. 71.05 (6) (b) 32. a. of the statutes is amended to read:

71.05 (6) (b) 32. a. Except as otherwise provided in this subdivision, an amount equal to not more than ~~\$3,000~~ \$5,000 per beneficiary, by each contributor, or ~~\$1,500~~ \$2,500 by each contributor who is married and files separately, to an account for each year to which the claim relates, except that the total amount for which a deduction may be claimed under this subdivision and under subd. 33., per beneficiary by any claimant may not exceed ~~\$3,000~~ \$5,000 each year, or ~~\$1,500~~ \$2,500 each year by any claimant who is married and files separately.

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

In the case of a married couple, the total deduction under this subdivision and under subd. 33., per beneficiary by the married couple may not exceed \$3,000 ~~\$5,000~~ each year. ~~In the case of divorced parents, the total deduction under this subdivision and under subd. 33., per beneficiary by the formerly married couple, may not exceed \$3,000, and the maximum amount that may be deducted by each former spouse is \$1,500, unless the divorce judgment specifies a different division of the \$3,000 maximum that may be claimed by each former spouse.~~ For taxable years beginning after December 31, ~~2013-2024~~, the dollar amounts in this subd. 32. a., and the dollar amounts in subd. 33. a., shall be increased each year by a percentage equal to the percentage change between the U.S. consumer price index for all urban consumers, U.S. city average, for the month of August of the previous year and the U.S. consumer price index for all urban consumers, U.S. city average, for the month of August ~~2012~~ 2023, as determined by the federal department of labor, except that the adjustment may occur only if the resulting amount is greater than the corresponding amount that was calculated for the previous year. Each amount that is revised under this subd. 32. a. and under subd. 33. a. shall be rounded to the nearest multiple of \$10 if the revised amount is not a multiple of \$10 or, if the revised amount is a multiple of \$5, such an amount shall be increased to the next higher multiple of \$10. The department of revenue shall annually adjust the changes in dollar amounts required under this subd. 32. a. and incorporate the changes into the income tax forms and instructions. Any amount that is paid into an account under this subdivision that exceeds the maximum amount that may be subtracted under this subdivision may be carried forward to the next taxable year, and thereafter, subject to the limitations in this subdivision.

SECTION 5. 71.05 (6) (b) 32. ae. of the statutes is amended to read:

71.05 (6) (b) 32. ae. No ~~carryover~~ carry-over that would otherwise be authorized under this subdivision may be allowed if the ~~carryover~~ carry-over amount was withdrawn from an account for any purpose and the withdrawal occurred within 365 days of the day on which the amount was contributed to the account. For purposes of this subd. 32. ae., a first in, first out method of accounting shall apply to the account.

SECTION 6. 71.05 (6) (b) 32. am. of the statutes is amended to read:

71.05 (6) (b) 32. am. Any ~~carryover~~ carry-over amount that is otherwise eligible for a subtraction under this subdivision shall be reduced by an amount equal to the amount of a withdrawal from an account that was not used for qualified higher education expenses, as that term is defined in 26 USC 529 (c) (7), (8), and (9) and (e) (3), to the extent that the withdrawn amount exceeds the amount that is added to income under par. (a) 26.

SECTION 7. 71.05 (6) (b) 32. ap. of the statutes is created to read:

71.05 (6) (b) 32. ap. No subtraction may be allowed under this subdivision for any amount contributed to an account for which a credit is claimed under s. 71.07 (10), 71.28 (10), or 71.47 (10).

SECTION 8. 71.07 (10) (a) 1. of the statutes is amended to read:

71.07 (10) (a) 1. "Claimant" means an individual who files a claim under this subsection and who is a sole proprietor and an employer and contributes to an employee's college savings account under par. (b). or who is a partner of a partnership, member of a limited liability company, or shareholder of a tax-option corporation that is an employer and that contributes to an employee's college savings account under par. (b).

SECTION 9. 71.07 (10) (a) 3. of the statutes is amended to read:

71.07 (10) (a) 3. "Employer" means ~~an employer that is a partnership, as defined in s. 71.195, or a tax-option corporation, as defined in s. 71.34 (2) a person for whom an individual performs or performed any service as an employee of that person and who is required to furnish a W-2 form to the employee for federal income tax purposes.~~

SECTION 10. 71.07 (10) (b) of the statutes is amended to read:

71.07 (10) (b) *Filing claims.* Subject to the limitations provided in this subsection, a claimant may claim as a credit against the tax imposed under s. 71.02, up to the amount of those taxes, for each employee of an employer, ~~the claimant's proportionate share, as computed under par. (c) 1., of an amount equal to the amount the employer paid into a college savings account owned by the employee in the taxable year in which the contribution is made.~~

SECTION 11. 71.07 (10) (c) 2. of the statutes is amended to read:

71.07 (10) (c) 2. The maximum amount of the credit per employee that a claimant may claim under this subsection is ~~the claimant's proportionate share of an amount equal to 25~~ 50 percent of the amount the employee's employer contributed to the employee's college savings account up to a maximum contribution equal to 25 percent of the maximum amount that an individual contributor may deduct under s. 71.05 (6) (b) 32. a. per beneficiary, ~~not to exceed a maximum credit of \$800.~~ For taxable years beginning after December 31, 2024, the dollar amount in this subdivision shall be increased each year by a percentage equal to the percentage change between the U.S. consumer price index for all urban consumers, U.S. city average, for the month of August of the previous year and the U.S. consumer price index for all urban consumers, U.S. city average, for the month of August 2023, as determined by the federal department of

labor, except that the adjustment may occur only if the resulting amount is greater than the corresponding amount that was calculated for the previous year. The amount that is revised under this subdivision shall be rounded to the nearest multiple of \$10 if the revised amount is not a multiple of \$10 or, if the revised amount is a multiple of \$5, such an amount shall be increased to the next higher multiple of \$10. The department of revenue shall annually adjust the change in the dollar amount required under this subdivision and incorporate the change into the income tax forms and instructions.

SECTION 12. 71.07 (10) (c) 3. of the statutes is created to read:

71.07 (10) (c) 3. A credit may be claimed under par. (b) only if, for federal income tax purposes, the compensation of the employee described in par. (b) is reported, or required to be reported, on a W-2 form issued by the claimant.

SECTION 13. 71.28 (10) (c) 2. of the statutes is amended to read:

71.28 (10) (c) 2. The maximum amount of the credit per employee that a claimant may claim under this subsection is an amount equal to ~~25~~ 50 percent of the amount the claimant contributed to the employee's college savings account up to a maximum contribution equal to 25 percent of the maximum amount that an individual contributor may deduct under s. 71.05 (6) (b) 32. a. per beneficiary, not to exceed a maximum credit of \$800. For taxable years beginning after December 31, 2024, the dollar amount in this subdivision shall be increased each year by a percentage equal to the percentage change between the U.S. consumer price index for all urban consumers, U.S. city average, for the month of August of the previous year and the U.S. consumer price index for all urban consumers, U.S. city average, for the month of August 2023, as determined by the federal department of labor, except that the adjustment may occur only if the resulting amount is greater than the corresponding amount that was calculated for the previous year. The amount that is revised under this subdivision shall be rounded to the nearest multiple of \$10 if the revised amount is not a multiple of \$10 or, if the revised amount is a multiple of \$5, such an amount shall be increased to the next higher multiple of \$10. The department of revenue shall annually adjust the change in the dollar amount required under this subdivision and incorporate the change into the income tax forms and instructions.

SECTION 14. 71.28 (10) (c) 3. of the statutes is created to read:

71.28 (10) (c) 3. A credit may be claimed under par. (b) only if, for federal income tax purposes, the compensation of the employee described in par. (b) is reported, or required to be reported, on a W-2 form issued by the claimant.

SECTION 15. 71.47 (10) (c) 2. of the statutes is amended to read:

71.47 (10) (c) 2. The maximum amount of the credit per employee that a claimant may claim under this subsection is an amount equal to ~~25~~ 50 percent of the amount the claimant contributed to the employee's college savings account up to a maximum contribution equal to 25 percent of the maximum amount that an individual contributor may deduct under s. 71.05 (6) (b) 32. a. per beneficiary, not to exceed a maximum credit of \$800. For taxable years beginning after December 31, 2024, the dollar amount in this subdivision shall be increased each year by a percentage equal to the percentage change between the U.S. consumer price index for all urban consumers, U.S. city average, for the month of August of the previous year and the U.S. consumer price index for all urban consumers, U.S. city average, for the month of August 2023, as determined by the federal department of labor, except that the adjustment may occur only if the resulting amount is greater than the corresponding amount that was calculated for the previous year. The amount that is revised under this subdivision shall be rounded to the nearest multiple of \$10 if the revised amount is not a multiple of \$10 or, if the revised amount is a multiple of \$5, such an amount shall be increased to the next higher multiple of \$10. The department of revenue shall annually adjust the change in the dollar amount required under this subdivision and incorporate the change into the income tax forms and instructions.

SECTION 16. 71.47 (10) (c) 3. of the statutes is created to read:

71.47 (10) (c) 3. A credit may be claimed under par. (b) only if, for federal income tax purposes, the compensation of the employee described in par. (b) is reported, or required to be reported, on a W-2 form issued by the claimant.

SECTION 17. 71.98 (11) of the statutes is created to read:

71.98 (11) QUALIFIED TUITION PROGRAMS. For taxable years beginning after December 31, 2021, sections 221 (e) (1) and 529 of the Internal Revenue Code as in effect for federal purposes, relating to qualified tuition programs.

SECTION 18. 224.50 (2) (a) of the statutes is amended to read:

224.50 (2) (a) Except as provided in s. 224.51, establish and administer a college savings program that allows an individual, trust, legal guardian, or entity described under 26 USC 529 (e) (1) (C) to establish a college savings account to cover tuition, fees, and the costs of room and board, books, supplies, and equipment required for the enrollment or attendance of a beneficiary at an eligible educational institution, as defined under 26 USC 529, and to cover tuition expenses in connection with enrollment or attendance at an elementary or secondary public, private, or religious school, as described in section 11032 of P.L. 115-97, related to qualified tuition programs under for the purposes set forth in 26 USC 529.

SECTION 19. Initial applicability.

(1) ADDITION TO TAX FOR NONQUALIFIED WITHDRAWALS PREVIOUSLY DEDUCTED. The treatment of s. 71.05 (6) (a) 26. a. that amends the definition of qualified higher education expenses to include a cross-reference to 26 USC 529 (c) (7) first applies retroactively to taxable years beginning after December 31, 2017. The treatment of s. 71.05 (6) (a) 26. a. that amends the definition of qualified higher education expenses to include a cross-reference to 26 USC 529 (c) (8) and (9) first applies retroactively to taxable years beginning after December 31, 2018. The treatment of s. 71.05 (6) (a) 26. a. to require the use of a first in, first out method of accounting and to include a cross-reference to s. 71.05 (6) (b) 32m. first applies to taxable years beginning on January 1 of the year in which this subsection takes effect, except that if this subsection takes effect after July 31, the treatment first applies to taxable years beginning on January 1 of the year following the year in which this subsection takes effect.

(2) DEFINITION OF QUALIFIED HIGHER EDUCATION EXPENSES. The treatment of s. 71.05 (6) (b) 32. am. that amends the definition of qualified higher education expenses to include a cross-reference to 26 USC 529 (c) (7) first applies retroactively to taxable years beginning after December 31, 2017. The treatment of s. 71.05 (6) (b) 32. am. that amends the definition of qualified higher education expenses to include a cross-reference to 26 USC 529 (c) (8) and (9) and the treatment of s. 224.50 (2) (a) first apply retroactively to taxable years beginning after December 31, 2018.

(3) TAX TREATMENT FOR CONTRIBUTIONS AND WITHDRAWALS; EMPLOYEE COLLEGE SAVINGS ACCOUNT CONTRIBUTION CREDIT. The treatment of ss. 71.05 (6) (a) 26. b. and c. and (b) 32. a., ae., and ap., 71.07 (10) (a) 1. and 3., (b), and (c) 2. and 3., 71.28 (10) (c) 2. and 3., and 71.47 (10) (c) 2. and 3. first applies to taxable years beginning on January 1, 2024.
